

APPEAL NO. 031633
FILED AUGUST 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 2, 2003. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (carrier) waived the right to contest compensability; (2) although the respondent (claimant) did not sustain an injury in the course and scope of employment with the employer, due to the carrier's waiver of the right to contest compensability, the injury is compensable; and (3) the claimant had disability from July 31 through October 9, 2002. The carrier appealed the hearing officer's carrier waiver determination, and the follow-on determinations that the injury was compensable and the claimant had disability because the carrier waived the right to dispute compensability. There is no response in the appeals file from the claimant.

DECISION

Affirmed.

This case turns on whether the carrier waived the right to contest compensability of the claimed injury by not timely contesting an injury in accordance with Section 409.021 and the decision in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002). As interpreted by the Supreme Court in Downs, Section 409.021 provides that the insurance carrier is to begin the payment of benefits as required by the 1989 Act or notify the Texas Workers' Compensation Commission (Commission) and the claimant of its refusal to pay benefits within seven days after receiving written notice of the injury. Claimant's Exhibit No. 1 is a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), which reflects that the carrier received written notice of the claim of injury on September 16, 2002. Although the TWCC-21 disputing the claim is dated September 23, 2002, the document was filed with the Commission on September 27, 2002, as evidenced by the Commission date stamp, which is clearly not within the seven-day period mandated by Section 409.021. The carrier's argument does not consider either the Downs decision or the numerous cases in which we have consistently found carrier waiver to exist. The hearing officer found that the carrier first received written notice of the claimed injury on September 16, 2002, and that the carrier did not dispute compensability within seven days of receiving written notice. The hearing officer concluded that the carrier waived its right to contest the compensability of the claimed injury in accordance with Section 409.021.

The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness.

Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find sufficient evidence to support the hearing officer's determination that the carrier waived the right to contest compensability according to Section 409.021.

Since the evidence is sufficient to support the determination that the carrier waived the right to contest compensability, the injury is compensable as a matter of law. Whether the claimant had disability from the compensable injury is a factual question for the hearing officer to resolve. We have reviewed the disability determination and conclude that the hearing officer's decision that the claimant had disability from July 31 through October 9, 2002, is supported by sufficient evidence. Cain, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **UNIVERSAL UNDERWRITERS OF TEXAS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge